IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

ST.Rev..No. 145 of 2004

(ORDER DATED 24-9-2003 IN TA.177/1998 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE)

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REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE:

M/S.KALLIYATH WIRE DISTRIBUTORS,
PANNIYANKARA,
KOZHIKODE.

BY ADV. SRI.K.SRIKUMAR

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA

BY SR.GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

S.T.Rev.No.145 of 2004

Dated this the 24th day of October, 2007.

O R D E R

H.L.Dattu, C.J.

The assessment year in question is 1989-90. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act. Its main activity is sale and supply of iron and steel. The assessee had filed its annual return before the assessing authority for the assessment year 1989-90. The assessing authority has rejected the return so filed by the assessee and has proceeded to complete the best judgment assessment and while doing so has taken into consideration the suppression detected by the Intelligence Wing of the department, the check post declarations and the findings of the Income Tax Department and thereafter has made an addition of 25 percent to the total turnover conceded by the dealer.

(2). Aggrieved by the said quantification of tax liability of the assessing authority, the assessee had filed appeal before the first appellate authority in S.T.A.No.156 of 1998. The appellate authority has modified the additions made by the assessing authority. While doing so has observed in his order dated 02-04-1998 as under:

> *"Considering the fact that the assessment was completed on the basis of the findings of the Income Tax Department the entire suppression*

have been covered. Hence further addition of 25% is unwarranted and that addition is hereby deleted."

(3). The first appellate authority has further directed the assessing authority to modify the assessment of the assessee for the assessment year 1989-90 by adding the actual suppression detected by the Income Tax Department to the total turnover declared by the assessee.

(4). The assessee, being aggrieved by the said order passed by the first appellate authority, had carried the matter in appeal before the Tribunal in T.A.No.177 of 1998. The Tribunal has rejected the appeal by its order dated 24th September, 2003 and while doing so, at para 5 of the order has observed as under:

"The next issue to be decided in this appeal is whether the addition sustained by the Ist appellate authority is reasonable and just. The appellant's counsel vehemently argued that the turnover suppression arrived by the I.T. Authorities are incorrect and an appeal is pending before the Commissioner of Income Tax. He also pointed out that the closing stock of iron scrap worth Rs.16,60,777/- assessed during the year 1989-90 is incorrect and unwarranted. On perusal of the assessment order it is found that the assessing authority has not assessed the

closing stock as alleged by the appellant. The raid conducted by the I.T. Authorities revealed that certain purchases were not accounted in the stock register. If the purchases were properly accounted total stock as on 31-3-90 would have been Rs.22,53,305/- whereas the value of closing stock shown as per the account was Rs.5,92,528/- only. Thus there was a difference of Rs.16,60,777/-. It is therefore clear that the appellant-dealer had disposed scraps worth Rs.16,60,777/- without accounting the same in the books of accounts. It is relevant to note that the search was conducted by the I.T. Department on 29-11-90 i.e., after the close of the financial year. The assessing authority is therefore correct in treating the difference of Rs.16,60,777/- as unaccounted sales. Even though the counsel for the appellant has stated that an appeal was filed against the order of the I.T. Officer before the Commissioner no orders have been produced. Since the assessment in question relates to 89-90, we do not find any reason to keep this appeal further pending. The Ist appellate authority has sustained the actual suppression detected alone and the addition of 25% made by the assessing authority towards probable omissions and suppression was deleted. In view of the above facts we do not find any reason to order any further relief in this case. The objections are accordingly over-ruled and the appeal stands

dismissed."

(5). Aggrieved by the findings and conclusions reached by the Tribunal, the assessee is before us in this revision petition.

(6). The assessee has framed the following questions of law for our consideration and decision:

> *"(i). Is not the Tribunal in error in confirming the best judgment addition on the findings of the Income Tax Department to fix the turnover when those findings were cancelled by the Ist appellate authority and set aside by the Income Tax Tribunal?*
>
> *(ii). Is not the Tribunal in error in confirming the best judgment addition without any independent finding of suppression or omission by the Sales Tax Department, while the findings of the Income Tax Department relied by the sales tax authorities were cancelled and set aside by the Income Tax Appellate Authorities?*
>
> *(iii) Is not the Tribunal being the highest fact finding authority erred in not considering the entry of scrap purchases in the books of accounts?*

(7). Sri. K.Srikumar, learned counsel appearing for the petitioner brings to our notice that the assessee being aggrieved by the suppression detected by the Income Tax Department had carried the matter in appeal

before the Commissioner of Income Tax (Appeals). Since it did not get a favourable order in the hands of the first appellate authority, it had carried the matter before the Tribunal by filing the second appeal. It appears that the Tribunal had remanded the matter to the assessing authority (Income Tax Department) to re-do the matter in accordance with law. It is also informed to us that after such remand, the Income Tax Officer has reduced the actual suppression detected by the department from Rs.16,60,777/- to Rs.12,20,653/-. Therefore, contends that the actual suppression that requires to be added to the total turnover of the dealer for the purpose of quantification of the tax liability under the provisions of the Kerala General Sales tax Act could only be Rs.12,20,653/-. At this stage, it is appropriate to observe that the Sales Tax Department has not questioned the correctness or otherwise of the orders passed by the Deputy Commissioner (Appeals) in S.T.A.No.156 of 1998 and the orders passed by the Tribunal in T.A.No.177 of 1998 dated 24th September, 2003, wherein the first appellate authority and the Tribunal has proceeded to observe that the assessing authority while completing the best judgment assessment in the assessee's case had entirely relied on the suppression detected by the Income Tax Department.

(8). In view of the subsequent order passed by the Income Tax Officer, on remand by the Tribunal, the actual suppression detected by the Income Tax Department is only Rs.12,20,653/-. Therefore that amount alone can be added to the turnover conceded by the dealer, while computing the tax

liability under the provisions of the Kerala General Sales Tax Act.

(9). In view of the above, we dispose of this revision petition with a direction to the assessing authority to make an addition of only a sum of Rs.12,20,653/- instead of Rs.16,60,777/- to the total turnover conceded by the dealer for the assessment year 1989-90 and issue a fresh demand notice.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

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